

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 7, 2010

- D055872 In re Marriage of Griffin**
The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Irion, J.
- D054688 City of San Diego v. San Diego City Employees' Retirement System**
The judgment is affirmed. The City shall recover its costs on appeal.
Nares, J.; We Concur: McConnell, P.J., O'Rourke, J.
- D054343 People v. Vang et al.**
D054636 People v. Vang et al.
(Consolidated) Ha's probation order is modified and the court is directed to amend item 12G of that order to read: "Not use a cell phone to communicate with any known gang member, or a paging device, except in the course of lawful employment." The judgment is affirmed as modified.
McIntyre, J.; We Concur: McConnell, P.J., O'Rourke, J.
- D056642 People v. Bybee**
The judgment is affirmed.
Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.
- D056741 Protax, LLC v. 2141 Stradella, Inc.**
Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. Each party to bear own costs on appeal.
- D054503 Emidio v. Martin**
The opinion filed May 10, 2010, is modified. The petition for rehearing is denied.
- D055310 City of Santee v. County of San Diego et al./State of California, Department of Corrections and Rehabilitation**
Judgment affirmed. Benke, Acting P.J.; We Concur: McIntyre, J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 8, 2010

D057366 People v. Capone

The petition for writ of error coram vobis has been read and considered by Justices Benke, Huffman and O'Rourke. We take judicial notice of petitioner's prior appeal No. D056093 and prior petition No. D056870.

In 2009 Capone entered a negotiated guilty plea to two counts of grand theft, two counts of elder theft and two counts of filing a false instrument. Capone also admitted that the amount of loss with respect to one of the grand theft counts exceeded \$150,000 within the meaning of former Penal Code section 12022.6, subdivision (a)(2). Under the plea bargain, more than 30 other theft-related and forgery counts were dismissed. The plea bargain called for a stipulated sentence of eight years in prison. In a subsequent restitution hearing, the court ordered Capone to pay \$915,395 in restitution to nine individuals and five businesses. Capone filed a notice of appeal from the restitution order and a companion habeas petition. The causes were consolidated, and we affirmed the judgment and denied the habeas petition in No. D056093.

In the current petition, Capone requests this court to issue a writ of error coram vobis. Capone claims that an unprovoked attack by a superior court bailiff caused her "extreme fear for her safety" such that she entered the guilty plea "so that no further court appearances were required." She also claims that she waived her right to a preliminary hearing for case No. SCN238123 in return for the ultimately unfulfilled promise that she would never have to plead guilty to charges in that case. To substantiate her claims, Capone attached to her petition a copy of the complaint regarding the purported attack.

Like a writ of error coram nobis, a writ of error coram vobis is granted when the following three requirements are met: (1) "some fact existed which, without any fault or negligence on [petitioner's] part, was not presented to the court at trial on the merits, and which if presented would have prevented the rendition of the judgment"; (2) " 'the newly discovered evidence . . . [does not go] to the merits of issues tried' "; and (3) " 'the facts upon which [petitioner] relies were not known to [her] and could not in the exercise of due diligence have been discovered by [her] at any time substantially earlier than the time of [her] motion for the writ.' " (People v. Shipman (1965) 62 Cal.2d 226, 230; In re Lindley (1947) 29 Cal.2d 709, 726.)

Assuming for the sake of argument that Capone's unsubstantiated allegations are true, still these requirements are not met. Capone admits she knew of the purported attack at the time she entered her guilty plea. Similarly, she knew that she had waived the preliminary hearing at the time she entered her guilty plea. It is only through her own fault or negligence that these issues were not raised in the trial court.

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 8, 2010 (Continued)

D057316 In re Young on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Benke, Huffman and O'Rourke. We take judicial notice of petitioner's prior petition Nos. D051764 and D056886.

Young claims that the officials at Centinela State Prison wrongfully deducted money from his trust account to pay restitution Young owes to his crime victims. He argues that the court's restitution order directed the California Department of Corrections and Rehabilitation (CDCR) to collect restitution only from Young's "earnings" in prison, and, consequently, restitution may not be collected from money gifted to Young and deposited in his trust account.

Young has not stated a prima facie case for relief. He did not provide this court with a copy of the operative restitution order. Instead, he provided only an incomplete excerpt, apparently from his sentencing hearing. (*People v. Duvall* (1995) 9 Cal.4th 464, 474-475.) Furthermore, the law Young cites, California Code of Regulations, title 15, section 3097, subdivision (g), does not support his position. That provision merely states that, when an inmate owes both a restitution fine and a direct order of restitution (that is, restitution owed to the crime victim), the CDCR should first collect the restitution owed to the victim.

The petition is denied.

D056184 People v. Samaniego

The judgment is affirmed. Haller, J.; We Concur: McConnell, P.J., O'Rourke, J.

D055620 People v. Faulcon

The award of credits is reversed. The case is remanded to the trial court for a determination of the correct number of credits, and, if necessary, amendment of the abstract of judgment and forwarding of the amended abstract to the Department of Corrections and Rehabilitation. In all other respects the judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J., McIntyre, J.

D055080 Gong, Individually and as Trustee, etc. v. Gong, Individually and as Trustee, etc.

The judgment is affirmed. Defendant David Gong shall recover his costs on appeal. Nares, J.; We Concur: Benke, Acting P.J., McDonald, J.

D057303 In re Adair on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 8, 2010 (Continued)

- D056228 K. Hovnanian Forecast Homes, Inc. v. IRC Coachella Ventures, LLC et al.**
The August 25, 2009 orders granting in part and denying in part Forecast's motion to tax costs, denying its motion for attorney fees, granting IRC and Innovative's motion to tax costs, and granting in part and denying in part IRC and Innovative's motion for attorney fees are reversed. The case is remanded to the trial court for further proceedings consistent with the parties' stipulation and the opinion in Forecast I. McIntyre, J.; We Concur: McConnell, P.J., Irion, J.
- D055805 People v. Irving**
The award of credits is reversed. The case is remanded to the trial court for a determination of the correct number of credits, and, if necessary, amendment of the abstract of judgment and forwarding of the amended abstract to the Department of Corrections and Rehabilitation. In all other respects the judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., O'Rourke, J.
- D057454 In re Wilson on Habeas Corpus**
The petition is denied.
- D057358 In re McGowan on Habeas Corpus**
The petition is denied.
- D056942 Ana A. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
No timely petition for writ relief has been filed for Ana A. The notice of intent is deemed to be abandoned. The case is dismissed.
- D057426 In re Carlos Rios on Habeas Corpus**
At the request of petitioner, the petition is dismissed.
- D057310 R.F. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
The attorney for petitioner R.F. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.
- D057203 D.J. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
The attorney for petitioner D.J. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 8, 2010 (Continued)

**D057445 Veronica P. v. Superior Court of San Diego County/San Diego County Health
and Human Services Agency**

This case has been reviewed by Associate Justices McDonald, Huffman, and Benke. The notice of intent is untimely. (Cal. Rules of Court, rule 8.450(e)(4)(B).) The case is accordingly dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 9, 2010

- D055556 People v. Valdez**
The judgment is affirmed.
O'Rourke, J.; We Concur: Haller, Acting P.J., McIntyre, J.
- D056357 In re H.V., a Juvenile**
The judgment is affirmed.
McDonald, J.; We Concur: Huffman, Acting P.J., Haller, J.
- D056375 Pointe SDMU v. Spolin Silverman & Cohen**
Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately as to Greenberg Traurig, LLP, only. (Cal. Rules of Court, rule 8.244(c)(2).) Each party to bear own costs on appeal.
- D057347 In re Estrada on Habeas Corpus**
The petition is denied.
- D057168 Wechsler v. Wechsler**
Pursuant to California Rules of Court, rule 8.140, the appeal filed April 12, 2010, is dismissed for appellant's failure to timely designate the record (Cal. Rules of Court, rule 8.121(a)).
- D057345 In re Buff on Habeas Corpus**
The petition is denied.
- D057301 In re Joiner on Habeas Corpus**
The petition is denied.
- D057419 Hicks v. Superior Court of San Diego County/Hazelton**
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 10, 2010

- D056132 Perez et al. v. JP Morgan Chase Bank, N.A.**
The order denying the special motion to strike is vacated and the matter is remanded to the trial court for determination of whether, under Code of Civil Procedure section 425.16, subdivision (b)(1), Perez and Vargas can show they have a probability of prevailing on their claims. Chase is entitled to costs on appeal. Irion, J.; We Concur: McConnell, P.J., O'Rourke, J.
- D055996 People v. Rash**
The judgment is affirmed.
McIntyre, J.; We Concur: Nares, Acting P.J., O'Rourke, J.
- D056587 In re Alyssa M. et al., Juveniles**
The appeal is dismissed.
Nares, J.; We Concur: Huffman, Acting P.J., McDonald, J.
- D054115 People v. Kennerson**
The judgment is affirmed. Benke, Acting P.J.; We Concur: McIntyre, J., Irion, J.
- D055668 Munn v. Briggs et al.**
The judgment is affirmed. Carlyn and Michael are awarded their costs on appeal. Benke, Acting P.J.; We Concur: Haller, J., Aaron, J.
- D055049 People v. T.R.**
The probation condition restricting T.R.'s computer use to school-related assignments is modified to read: "The minor is not to use a computer for any purpose other than school-related assignments, except as his probation officer may from time to time reasonably permit for legitimate work or personal purposes by a written notice delivered to the minor, his parents, and other adults supervising his computer use. The minor is to be supervised when using a computer in the common area of his residence or in a school setting." The probation condition prohibiting him from associating with designated persons is modified to read: "The minor shall not associate with, contact, annoy, molest or be in the company of [Victim], [D.R.], or any other person designated by the Probation Officer in a written notice delivered to the minor and known by him to be so designated." In all other respects, the judgment is affirmed.
McDonald, J.; We Concur: Benke, Acting P.J., Aaron, J.
- D056760 In re R. P., a Juvenile**
The appeal is dismissed.
McDonald, J.; We Concur: Benke, Acting P.J., Huffman, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 10, 2010 (Continued)

- D054940 Bakker, as Trustee, etc. v. Muehl et al.**
Affirmed. Appellant to bear respondents' costs on appeal.
Haller, J.; We Concur: Benke, Acting P.J., Aaron, J.
- D055319 People v. Botello**
The judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J., Nares, J.
- D055078 San Diego Steel Holdings Group, Inc. v. Highland Partnership, Inc.**
Order affirmed. Appellant to bear respondent's costs on appeal.
Haller, Acting P.J.; We Concur: McDonald, J., Aaron, J.
- D057381 In re Bennett on Habeas Corpus**
The petition is denied.
- D055220 Gardner Pool Plastering, Inc. v. Law**
The judgment is reversed. On remand, the trial court shall strike the attorney fees and costs from the arbitrator's award and, as so corrected, enter a new order confirming the award. Diane Law is awarded costs on appeal.
O'Rourke, J.; We Concur: Nares, Acting P.J., McIntyre, J.
- D057434 Robbins v. Superior Court of San Diego County/Roadone West, Inc., et al.**
The petition for writ of mandate and request for stay have been read and considered by Justices Benke, Huffman and Nares. The petition is denied.
- D057360 In re Williams on Habeas Corpus**
The petition is denied.
- D054613 People v. Cravens**
The order of May 14, 2010, submitting the above case is vacated to allow further briefing. (Cal. Rules of Court, rule 8.256(e)(1).) The court requests counsel to respond by simultaneous supplemental letter brief to the following issue no later than June 21, 2010, and to not file a response to the opposing party's letter brief absent a request by the court: If the court were to conclude there is insufficient evidence to support the second degree murder conviction in this case and exercise its discretion to modify the judgment by reducing the conviction to a lesser included offense (People v. Bechler (1998) 61 Cal.App.4th 373, 378-379; People v. Navarro (2007) 40 Cal.4th 668, 678; Pen. Code, §§ 1181, subd. 6; 1260), to what lesser included offense would the conviction properly be reduced? Counsel are requested to address the applicability of People v. Garcia (2008) 162 Cal.App.4th 18, 26-33 to this issue. The matter will be resubmitted upon completion of supplemental briefing.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 11, 2010

- D054827 People v. Gillispie**
The judgment is reversed and the case is remanded with directions to the trial court to determine whether the People can demonstrate the constitutional justification for imposing on SVP' a greater burden than is imposed on MDO's and NGI's in order to obtain release from commitment.
Irion, J.; We Concur: McConnell, P.J., McIntyre, J.
- D056893 In re Marie B., a Juvenile**
The appeal is dismissed. Haller, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.
- D057377 In re Fernandez on Habeas Corpus**
The petition is denied.
- D057367 In re Wimberly on Habeas Corpus**
The petition is denied.
- D057496 City of National City et al. v. Superior Court of San Diego County/Leif et al.**
The petition is denied.
- D057378 In re Grant on Habeas Corpus**
The petition is denied.
- D057255 Andrew W. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
The attorney for petitioner Andrew W. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.
- D057293 People v. Sonnier**
The "Petition for Rehearing on the Court's Own Motion (Cal. Rules of Court, rule 8.268(a)(1) and Request for reinstatement of Appeal Following Dismissal" is denied.
- D053875 People v. Aguon**
The petition for rehearing is granted. This court suspends further proceedings herein pending the finality of proceedings contemplated by *People v. McKee* (2010) 47 Cal.4th 1172.